

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN FRANCISCO DIVISION**
9

10 HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,

11 Plaintiff,

12 v.

13 SEAFOOD PEDDLER OF SAN
14 RAFAEL, INC., dba SEAFOOD
15 PEDDLER; ALPHONSE SILVESTRI;
RICHARD MAYFIELD; FIDEL
CHACON,

16 Defendants.
17

Case No. 12-cv-0116 JW (NC)

**TENTATIVE RULING RE:
SEAFOOD'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS**

Re: Dkt. No. 20

18 Defendant Seafood Peddler moves to compel the further production of documents
19 responsive to Seafood's first request for production of documents, including the FLSA
20 Narrative that the Secretary inadvertently disclosed in responding to Seafood's document
21 request. Dkt. No. 20.

22 This order provides the parties with a tentative ruling as to issues to be addressed
23 at the hearing on Seafood's motion to compel:

24 (1) **Waiver of Confidential Informant's Privilege.** The Secretary did not waive
25 the confidential informant's privilege by inadvertently producing the FLSA Narrative,
26 DOL552-567, to Seafood's counsel;

27 (2) **Delayed Production of Privilege Log.** The Secretary did not waive all
28 asserted privileges by failing to provide a privilege log at the time she responded to

Case No. 12-cv-0116 JW (NC)
TENTATIVE RULING RE:
MOTION TO COMPEL

1 Seafood's document production request;

2 (3) **Privilege Log.** As to the privileges asserted by the Secretary, including the
3 informant's privilege, the deliberative process privilege, the attorney-client privilege, the
4 work product doctrine, and the investigative files privilege, the Secretary's index of
5 documents withheld or redacted pursuant to a privilege or objection, Dkt. No. 28-6, is
6 insufficient in its current form as it fails to describe the responsive material withheld; the
7 identity and position of its author; the date it was written; the identity and position of all
8 addressees and recipients, the material's present location, and the specific reasons for its
9 being withheld, including the privilege invoked and the grounds for withholding. *See*
10 Fed. R. Civ. P. 26(b)(5)(A)(ii); *see also Friends of Hope Valley v. Frederick Co.*, 268
11 F.R.D. 643, 650-51 (E.D. Cal. 2010).

12 Finally, Seafood's reply asserts deficiencies in the Secretary's privilege log that
13 the Secretary has not had an opportunity to rebut. *See* Reply at 14-16. For example,
14 Seafood contends that the work product privilege claimed as to "WH Letters to
15 Employees" is waived as the documents have been shared with third parties. *Id.* at 15.
16 The parties are therefore ordered to meet and confer in person in Courtroom A, 15th
17 Floor, San Francisco at 9:00 a.m. on August 22, 2012 to discuss necessary amendments to
18 be made to the Secretary's privilege log and the need and timing for additional briefing
19 regarding asserted privileges. The motion to compel hearing previously scheduled for
20 9:00 a.m. will be held at 10:00 a.m. before Magistrate Judge Nathanael Cousins.

21
22 IT IS SO ORDERED.

23 DATED: August 20, 2012

24
25 
26 NATHANAEL M. COUSINS
27 United States Magistrate Judge
28